

## **400 KAR 2:100. Hearings and appeals.**

RELATES TO: KRS 146.465, 146.480, 146.495, Chapter 424

STATUTORY AUTHORITY: KRS 146.475, 146.485, 146.530

NECESSITY, FUNCTION, AND CONFORMITY: KRS 146.475 and 146.485 require the commission to establish rules for the protection of nature preserves. KRS 146.530 requires the commission to establish a procedure whereby orders and final determinations of the commission may be appealed administratively. This administrative regulation sets forth the procedure to be followed by the commission in conducting hearings on issues related to nature preserves.

Section 1. Applicability. This administrative regulation shall apply to hearings conducted by the commission including the following purposes:

(1) Determining whether there exists an imperative and unavoidable public necessity that justifies the taking of a nature preserve, or any part thereof, by another public body, or disposition of a nature preserve or any part thereof by the commission.

(2) Determining whether proposed amendments to the articles of dedication of a nature preserve will not permit an impairment, disturbance, use or development of the nature preserve that is inconsistent with the articles of dedication or the Act.

(3) Determining whether differences exist in the characteristics and conditions of a proposed nature preserve, or other reasons, that justify making an exception in the articles of dedication to the requirements of these administrative regulations.

(4) Determining the custodian of a nature preserve when the nature preserve is owned by the commission in fee simple.

Section 2. Notice of Hearings. Notice of hearing shall be given in accordance with KRS Chapter 424.

(1) The notice shall:

(a) State the time, place, and purpose of the hearing;

(b) Be published not less than seven (7) nor more than twenty-one (21) days prior to the hearing;  
or

(c) Be published in the county, or counties, in which the nature preserve is located, and for the state at large.

(2) The notice may:

(a) Be published more than once as directed by the commission;

(b) Set forth the address to which written comments on the purpose of the hearing may be submitted, and the date by which those written comments shall be submitted.

Section 3. Hearings. (1) The hearing shall be conducted in the following manner:

(a) The hearing shall be held at a time and place to be set by the commission and may be held in conjunction with a regular meeting of the commission.

(b) Any interested person may appear at the hearing and make an oral or written presentation regarding the purpose of the hearing. The commission may regulate the length, order, and excessive repetition of oral presentations.

(c) The director may make a presentation and recommendation for action to the commission at the hearing.

(d) The commission shall consider all written and oral presentations in making its determination.

(e) The commission, through the chairman, shall issue a final determination within sixty (60) days of the hearing. The determination shall set forth the findings of the commission in reaching its determination.

(2)(a) The final determination of the commission shall be submitted to the secretary of the cabinet for the secretary's approval within five (5) days of its issuance.

(b) Copies of the final determination shall be sent to any person who made a written or oral presentation to the commission and any other person who makes a request in writing to the commission for a copy.

Section 4. Appeals. (1) Any final determination of the commission may be appealed to the secretary of the cabinet.

(2) The appeal shall be taken by filing with the secretary of the cabinet exceptions to the final determination of the commission within fifteen (15) days of its issuance. The exceptions shall state specifically the grounds relied upon by the appellant.

(3) The secretary shall approve the final determination of the commission unless, based upon the findings set forth in the final determination or any exceptions thereto, the secretary finds:

(a) There is no imperative and unavoidable public necessity due to the existence of a viable alternative to the proposed granting or disposition of a nature preserve or any part thereof;

(b) The determination of the commission is inconsistent with the articles of dedication or the Act;  
or

(c) The commission acted without or in excess of its power.

(4) The secretary shall, within forty-five (45) days, approve the final determination of the commission, or notify the commission in writing of the secretary's refusal to approve the final determination and set forth the reasons therefor. Failure of the secretary to so act shall constitute approval of the commission's action.

(5) Notice of the secretary's approval or disapproval shall be sent to all persons as provided for in Section 3(2) of this administrative regulation. (13 Ky.R. 1326; eff. 2-10-87.)